

Message Text

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FM SECSTATE WASHDC

TO DR ARTUR GREEN

IW LINWOOD AVE

EMERSON NEW JERSEY PRIORITY

UNCLAS STATE 014303

E.O. 11652:

TAGS:

SUBJECT:

THIS IS IN RESPONSE TO YOUR LETTER OF JANUARY 14, 1977
CONCERNING THE POSTING OF A BOND IN THE SUPERIOR COURT OF
THE CANTON OF ZURICH IN CONNECTION WITH THE SUIT THAT YOU
ARE PURSUING. YOU INDICATE THAT UNDER A CONVENTION, THE
1954 HAGUE CONVENTION ON CIVIL PROCEDURE, SWITZERLAND DOES
NOT REQUIRE NATIONALS OF OTHER PARTIES TO THE CONVENTION
TO POST BOND. INASMUCH AS THE UNITED STATES IS NOT PARTY
TO THE HAGUE CONVENTION ON CIVIL PROCEDURE, YOU CANNOT RELY
ON BENEFITS THEREOF.

ARTICLE 1, PARAGRAPH 1, OF THE TREATY OF 1850 BETWEEN
THE UNITED STATES AND SWITZERLAND PROVIDES THAT CITIZENS OF
THE TWO COUNTRIES "SHALL HAVE FREE ACCESS TO THE TRIBUNALS,
AND SHALL BE AT LIBERTY TO PROSECUTE AND TO DEFEND THEIR
RIGHTS BEFORE COURTS OF JUSTICE IN THE SAME MANNER AS
NATIVE CITIZENS." THE FEDERAL TRIBUNAL HAS HELD THAT THE
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PAGE 02 STATE 014303

DEMAND FOR SECURITY DOES NOT AFFECT THE "FREE ACCESS TO THE
TRIBUNALS" AND HENCE THAT AN AMERICAN PLAINTIFF MUST PROVIDE
SECURITY (INSTANT INDEX CORPORATION V. TRIBUNAL CANTONAL
VAUDOIS, B.G.E. 60 (I) 220 (1934)).

ACCORDING TO ARTHUR NUSSBAUM'S AMERICAN-SWISS PRIVATE
INTERNATIONAL LAW (OCEANA 1958), ON BASIS OF 1850 TREATY,

FEDERAL TRIBUNAL HAS GRANTED THE ARMENRECHT TO AN IMPECU-
NIOUS AMERICAN WHO DID NOT RESIDE IN SWITZERLAND AND WHO
WANTED TO BRING A SUIT IN A LOWER SWISS COURT. THE CASE
IS WOLFE V. FREI, B.G.E. 76 (I) 111 (1950). THE ARMEN-
RECHT RELIEVES A PARTY FROM STATUTORY COSTS OF A SUIT AND
MAY PROVIDE HIM WITH THE RIGHT TO HAVE COUNSEL APPOINTED
BY THE COURT, WITHOUT OBLIGATION TO PAY A FEE. MOREOVER,
IF THE ARMENRECHT IS GRANTED, THE PLAINTIFF IS THEREBY
RELEASED FROM THE OBLIGATION TO GIVE SECURITY TO THE
DEFENDANT.

I SUGGEST THAT YOU CALL THE ATTENTION OF THE ABOVE
INFORMATION TO YOUR ATTORNEY. I HOPE IT WILL ASSIST HIM
IN OBTAINING FOR YOU THE RELIEF THAT YOU SEEK.

STEPHEN M. SCHWEBEL
DEPUTY LEGAL ADVISER
HABIB

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